

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated May 7, 2007 (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant notes that Claims 11-14 are not rejected in the Office Action, and the generic objection to the line spacing of the claims is improper and overcome as discussed below. Thus, Claims 11-14 are believed to be in condition for allowance. Applicant accordingly requests indication that Claims 11-14 are allowed.

With respect to the objection to the drawings, Applicant respectfully traverses. In the Specification, the reference numeral 110 is used to collectively refer to base stations; therefore, consistent with the Specification, reference numeral 110 is used to identify one or more base stations in the figures. The cited rule, 37 C.F.R. 1.84(p)(4), requires that the same reference character not be used to designate different parts of an invention. The collectively referred to base stations are not different parts of the invention, and consistent with the further requirements of the cited rule, the same part of the invention (base stations) is designated by the same reference character. The use of reference numeral 110 to refer to the base stations of Figure 1 is consistent with both the instant Specification and the asserted rule. Applicant accordingly requests that the objections to the drawings as well as to paragraph 0019 be removed.

Regarding the objection to the line spacing of the Specification, Applicant notes that the Specification was published as Publication No. 2004-0128125 on July 1, 2004. Consistent with MPEP § 1120, Section III, the publication of the Specification indicates that the line spacing was considered compliant with the requirements of 37 C.F.R. 1.52. Submission of a replacement Specification merely to alter the line spacing would appear to be impractical since the Specification is available in electronic form such that the spacing (and font size) may be manipulated electronically for readability purposes. Applicant accordingly requests that the objection be removed. If the objection is maintained, Applicant requests further clarification and an opportunity to respond.

Regarding the objections to paragraphs 0011 and 0036, Applicant respectfully traverses. The proposed changes to the language in these paragraphs would inappropriately change the meaning of the objected-to sentences. More specifically, the asserted interpretation of paragraph 0036 is improper as it indicates that a selection would be made without speech quality deteriorating. The original and correct sentence, instead, indicates that without the disclosed selection the speech quality deteriorates. Since the original language accurately conveys the intended subject matter, the objections are improper. Applicant accordingly requests that the objections to paragraphs 0011 and 0036 be removed.

Regarding the objection to paragraph 0012, the Specification has been amended in accordance with the Examiner's suggestions. In view of these changes, the objection is believed to be overcome, and Applicant requests that the objection be removed.

Regarding the objection to the claims set forth in paragraph four, the provided claim set at pages 3-8 of this paper have one-and-a-half spaced lines. This replacement set of claims is believed to overcome the Examiner's objection; therefore, Applicant requests that the objection be removed.

Applicant respectfully traverses each of the prior art rejections (§§ 102(b) and 103(a)) based at least in part upon the teachings of EP 1,126,651 to Demetrescu (hereinafter "Demetrescu") because Demetrescu alone, or in combination, does not teach or suggest each of the claimed limitations. For example, Demetrescu has not been shown to teach receiving information on an active codec mode set, as claimed in each of the independent claims. Rather, the cited portion at paragraph [0015] merely discusses monitoring the condition of a received signal. There is no indication that the received signal includes information on an active codec mode set or that any active codec mode set is received separately. Similarly, the cited portions at paragraphs [0028], [0037] and [0038] make no mention of activating supported speech codec modes that correspond with the active codec mode set determined in a telecommunications network. Without a presentation of correspondence to each of the claimed limitations, the prior art rejections are improper.

Moreover, Demetrescu has not been shown to teach encoding speech signals with activated modes such that a speech codec mode of the substantially lowest bit rate is adapted to speech frames so that the level of residual error in coding will be minimized in view of the channel conditions. For example, the cited portions make no mention of using a substantially lowest bit rate codec mode or minimizing residual error in view of channel conditions. Instead, paragraph [0032] indicates that the codec mode is determined in accordance with the quality of a link based on received signal strength and that a high rate is intentionally set in good channel conditions. Demetrescu has not been shown to teach each of the limitations of at least the independent claims, and without such a showing, the prior art rejections are improper.

With particular respect to the § 102(b) rejection, Applicant notes that in order to anticipate a claim, the asserted reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the patent claim; *i.e.* every element of the claimed invention must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102. As Demetrescu does not teach each of the limitations of independent Claims 1, 8 and 15, Applicant respectfully submits that Demetrescu fails to anticipate Claims 1, 2, 8 and 15.

Dependent Claim 2 depends from independent Claim 1 and also stands rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Demetrescu. While Applicant does not acquiesce with the particular rejection to this dependent claim, the rejection is also improper for the reasons discussed above in connection with independent Claim 1. This dependent claim includes all of the limitations of base Claim 1 and recites additional features which further distinguish it from the cited reference. Therefore, the rejection of dependent Claim 2 is improper, and Applicant requests that it be withdrawn.

With respect to the § 103(a) rejections of dependent Claims 3-7, 9, 10 and 16, Applicant traverses because the further reliance on the teachings of U.S. Patent No. 6,574,593 to Gao *et al.* (hereinafter “Gao”), U.S. Patent No. 5,689,615 to Benyassine *et al.* (hereinafter “Benyassine”), and the IEEE article by Wang *et al.* (hereinafter “Wang”) does not overcome the above-discussed deficiencies of Demetrescu. For example, none of these further relied-upon references have been shown to teach any of the limitations directed to encoding such that a speech codec mode of the substantially lowest bit rate is adapted to speech frames so that the level of residual error in coding will be minimized in view of the channel conditions that are absent in the teachings of Demetrescu as discussed above. As none of these asserted references teaches or suggests at least these limitations, any combination of these teachings would also fail to teach or suggest such limitations. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejections are improper. Applicant accordingly requests that they be withdrawn.

With particular respect to the rejection of dependent Claims 3, 9 and 16, Applicant traverses because the cited references have not been asserted as teaching each of the claimed limitations. For example, while it is acknowledged that Demetrescu does not teach adapting the target level of residual error in coding in the speech codec mode selection, no teachings have been identified in Gao as overcoming this deficiency. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejection is improper and should be withdrawn.

It should also be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

In addition, new Claims 17 and 18 have been added. The subject matter of these claims largely corresponds to the subject matter of Claim 8 and further support may be found in the Specification, for example, at paragraph [0019]. These claims are believed to

be patentable over the asserted references for the reasons set forth above in connection with at least the independent claims.


With respect to each of the provisional rejections of Claims 1-5 and 8, under the judicially-created doctrine of double patenting over co-pending and commonly-owned patent applications having publication nos. 2005/055203, 2005/0143984, and 2005/0075873, Applicant requests that the provisional rejections be withdrawn. In view of the arguments set forth above, the objections and substantive art rejections are believed to be overcome and should be withdrawn. Once withdrawn, the only rejections remaining in the instant application are the provisional obviousness-type double patenting rejections. Therefore, in accordance with MPEP § 804 I(B), Applicant respectfully requests that the provisional obviousness-type double patenting rejections be withdrawn and that the instant application be permitted to issue as a patent. In the alternative, Applicant requests that the provisional rejections be suspended until the claims of either the instant application or the respective co-pending applications issue as patents, at which time Applicant would consider filing a terminal disclaimer in one or more of the applications.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.062PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: November 7, 2007

By: 

Erin M. Nichols  
Reg. No. 57,125